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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 RICHARD ANTHONY ORTIZ,
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11 Petitioner,
12 v.
13 UNITED STATES OF AMERICA,
14 Respondent.

Case No. 2:15-CV-863-RSL

ORDER DENYING
PETITIONER'S MOTION
PURSUANT TO FEDERAL
RULE OF CRIMINAL
PROCEDURE 36

15 This matter comes before the Court on a statement filed by petitioner Richard Anthony
16 Ortiz on July 19, 2019. Dkt. #14. Petitioner requests that the judgment issued against him be
17 amended to correct a clerical error. Id. The Court construes this as a motion pursuant to Federal
18 Rule of Criminal Procedure 36.


19 On May 16, 2013, petitioner was found guilty of Conspiracy to Distribute Heroin and/or
20 Methamphetamine and Possession of Heroin with Intent to Distribute. United States of America
21 v. Richard A. Ortiz, 2:12-cr-00062-RSL-28 ("Criminal Case"), Dkt. #954; see 21 U.S.C. §§
22 841(a)(1), 841(b)(1)(A), 846. He was sentenced on December 13, 2013 to a total of 180 months,
23 and a special assessment fee of \$200 was imposed. Criminal Case, Dkt. #1196. The conviction
24 was affirmed by the Ninth Circuit on January 23, 2015. Criminal Case, Dkt. #1360. Petitioner
25 then filed a motion under 28 U.S.C. § 2255 on June 1, 2015. Dkt. #1. This was denied on
26 December 8, 2015. Dkt. #13. Petitioner filed this motion more than four years later arguing that
27 the special assessment fee should not have exceeded \$100 because he was serving concurrent
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1 sentences on each of his offenses. Dkt. #14. He requests that the “clerical error” be corrected
2 pursuant to Federal Rule of Criminal Procedure 36. Id. at 4.

3 “The provisions of Rule 36 do not permit a substantive change in the period of
4 incarceration which the defendant must serve. A change made under [Rule] 36 can do no more
5 than conform the sentence to the term which the record indicates was intended.” United States v.
6 Kaye, 739 F.2d 488, 490 (9th Cir. 1984). What petitioner seeks is not a correction of a clerical
7 error, but a substantive change to his sentence. See U.S.A. v. Thompson, No. CR 03-00847-
8 ABC, 2015 WL 13722858, at *3 (C.D. Cal. May 6, 2015) (“Rule 36 allows the Court to correct
9 only clerical errors. ... Here, in contrast, Defendant asks us to make a substantive change to his
10 sentence by significantly reducing the special assessment fee imposed. ... Defendant argues that
11 the sentencing Judge erred in calculating the special assessment fee. ... In so doing, Defendant
12 claims a judicial error, which cannot be remedied by Rule 36.”). Nor does petitioner give any
13 explanation for why he has raised this issue four years after the denial of his 28 U.S.C. § 2255
14 motion and five and a half years after the sentence was imposed. Accordingly, the Court denies
15 the motion without reaching the merits of petitioner’s claim. See id.

16 For all the foregoing reasons, petitioner’s motion is DENIED.

17 DATED this 4th day of September, 2019.

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21 Robert S. Lasnik
22 United States District Judge
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